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EXAMINER
BATES, KEVIN T

ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 May 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>28-44</u> is/are pending in the application.

     4a) Of the above claim(s) <u>1-27</u> is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>28-44</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some *   c)☐ None of:

         1.☐ Certified copies of the priority documents have been received.

         2.☐ Certified copies of the priority documents have been received in Application No. _____.

         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5-6-08</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

Response to Amendment

This Office Action is in response to a communication made on May 2, 2008.

The Information Disclosure Statement received May 6, 2008 has been

considered.

Claims 1-27 have been withdrawn as non-elected claims.

Claims 39-40 and 42-43 have been amended.

Claims 28 – 44 are pending in this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 28-34, 36-37, 39-40, 42-43 are rejected under 35 U.S.C. 102(e) as

being anticipated by Tuomenoksa (7181542).

Regarding claims 28 and 32, Tuomenoksa teaches a system comprising:

a first computing device coupled to a first network (Col. 3, lines 41 – 44; the first

processor);

a second computing device having a network device included therein, the

network device coupled to a second network, the second computing device coupled to

the first network (Col. 3, lines 41 – 44, where the second network device is the

additional processor; see also Figure 15), the second computing device including

software which when executed causes the second computing device to perform

operations comprising:

accepting a connection request from the first computing device over a

communication channel on the first network (Col. 3, lines 44 – 50);

forwarding to the first computing device via the communication channel incoming

data units received by the network device over the second network (Col. 3, lines 44 –

50),

receiving from the first computing device via the communication channel

outgoing data unit requests to send outgoing data units onto the second network via the

network device (Col. 3, lines 55 – 59).

Regarding claim 29, Tuomenoksa teaches the system of claim 28 wherein the

communication channel is a tunnel (Col. 3, lines 44 – 50; see also Fig. 15).

Regarding claim 30, Tuomenoksa teaches the system of claim 29 wherein the

first computing device includes a first tunnel device and the second computing device

includes a second tunnel device, the tunnel established between the first tunnel device

and the second tunnel device (Fig. 15).

Regarding claim 33, Tuomenoksa teaches the system of claim 32 wherein the

first computing device includes a first communication device and the second computing

device includes a second communication device, the communication channel

established between the first communication device and the second communication

device (Col. 3, lines 44 – 50).

Regarding claims 31 and 34, Tuomenoksa teaches the system of claims 30 and

33 wherein the first tunnel device and the second tunnel device are each network

interface devices (Fig. 15).

Regarding claim 35, Tuomenoksa teaches the system of claim 32 wherein the

first network is an Ethernet network (Col. 11, lines 27 – 44; Col 31, line 49).

Regarding claim 36, Tuomenoksa teaches a method for allowing a computing

device to access the capabilities of a network device via a virtual interface comprising:

establishing over a first network a communication channel with the computing

device (Col. 30, lines 45 – 57);

associating a network interface of the network device with the communication

channel (Col. 29, lines 57 – 65);

receiving over a second network incoming data units directed to the network

interface of the network device (Col. 31, lines 14 – 23);

forwarding the incoming data units to the computing device via the

communication channel (Col. 31, lines 14 – 23).

Regarding claim 39, Tuomenoksa teaches a network testing system (Col. 21,

lines 1 – 4) having a processor, a memory, an operating system, and at least one

network card, the processor to execute instructions stored in the memory to cause the

network testing system to perform operations comprising

the network testing system opening over a first network a communication

channel with a computing device (Col. 30, lines 45 – 57)

the network testing system associating a network interface of a network device

included in one of the network cards with the communication channel (Col. 29, lines 57

– 65)

the network testing system receiving over a second network incoming data units

directed to the network interface of the network device (Col. 31, lines 14 – 23)

the network testing system forwarding the incoming data units to the computing

device via the communication channel (Col. 31, lines 14 – 23).

Regarding claims 37 and 40, Tuomenoksa teaches the method of claims 36,

and 39, further comprising: receiving via the communication channel outgoing data unit

requests from the computing device, the outgoing data unit requests including an

identifier of a specified network interface (Column 10, lines 17 – 31); transmitting

outgoing data units pursuant to the outgoing data unit requests onto the second network

via the specified network interface (Column 8, lines 55 – 67).

Regarding claims 38, and 41, Tuomenoksa teaches the method of claims 36,

39, and 42 wherein the establishing the communication channel includes using a

transmission control protocol (TCP) socket to create a tunnel (Fig 15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuomenoksa.

Regarding claim 42, Tuomenoksa teaches a machine readable medium having instructions stored thereon which when executed by a processor cause a network card to perform operations comprising

the device establishing a communication channel over a first network with a computing device (Col. 30, lines 45 – 57)

the device associating a network interface of a network device included in the network card with the communication channel (Col. 29, lines 57 – 65)

the device receiving over a second network incoming data units directed to the network interface of the network device (Col. 31, lines 14 – 23)

the device forwarding the incoming data units to the computing device via the communication channel (Col. 31, lines 14 – 23).

Tuomenoksa does not explicitly indicate a network care perform those instructions.

Examiner takes Official Notice (see MPEP § 2144.03) that "a network card can be programmed to perform the functions as described in claim 42, instead of just emulating a network card as disclosed in Tuomenoska (*see* Col. 15, lines 23 – 29)".

The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Regarding claim 43, Tuomenoksa teaches the medium of claim 42, further comprising: receiving via the communication channel outgoing data unit requests from the computing device, the outgoing data unit requests including an identifier of a specified network interface (Column 10, lines 17 – 31); transmitting outgoing data units pursuant to the outgoing data unit requests onto the second network via the specified network interface (Column 8, lines 55 – 67).

Regarding claim 44, Tuomenoksa teaches the medium of claim 42 wherein the establishing the communication channel includes using a transmission control protocol (TCP) socket to create a tunnel (Fig 15).

Response to Arguments

Applicant's arguments with respect to claims 28-44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571)272-3980. The examiner can normally be reached on 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin Bates/
Primary Examiner, Art Unit 2153